

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ORIGINAL
FILED IN CLERK'S OFFICE
FEB 12 2004

LARRY WHISTLER)	
a/k/a LARRY ZBYSZKO)	
a/k/a/ THE LIVING LEGEND,)	
an individual)	
)	
Plaintiff,)	Civil Action No.: 1 02- CV-1008-CC
)	
vs.)	
)	
WORLD WRESTLING)	
ENTERTAINMENT, INC., a Delaware)	
corporation,)	
)	
Defendant.)	

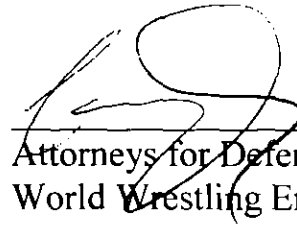
NOTICE OF FILING OF ORIGINAL AFFIDAVIT

World Wrestling Entertainment, Inc. ("WWE") hereby gives notice of the filing this day with the Court of the original affidavit of Professor David M. Yerkes. A copy of this affidavit was filed with the Court on February 9, 2004 in support of WWE's Motion for Summary Judgment.

[SIGNATURES ON FOLLOWING PAGE]

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Respectfully submitted,



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CERTIFICATION

Pursuant to Local Rule 7.1D, counsel for Defendant hereby certify that this document has been prepared with Times New Roman font (14 point).

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LARRY WHISTLER
a/k/a LARRY ZBYSZKO
a/k/a THE LIVING LEGEND,
an individual,

Plaintiff,

VS.

WORLD WRESTLING
FEDERATION ENTERTAINMENT,
INC., a Delaware corporation,

Defendant.

Civil Action No.: 1-02-CV-1008-CC

**STATE OF CONNECTICUT
COUNTY OF LITCHFIELD**

AFFIDAVIT

Personally appeared before the undersigned officer duly authorized to administer oaths in the State and County aforesaid, DAVID M. YERKES, who, having been placed under oath deposed and stated as follows:

1.

My name is David M. Yerkes. I am above the age of majority and do not suffer any disability that would disqualify me from testifying under oath. I make this Affidavit based upon my own personal knowledge.

2.

I have been retained by the Defendant, World Wrestling Entertainment, Inc. to testify in this matter as an expert witness. Attached hereto is a true and correct copy of the Expert Report of Professor David M. Yerkes (the "Report") which I prepared. My qualifications, the issues I was asked to address, the facts and data I considered, the materials on which my opinion is based, the principles and methods I applied, and my conclusions are all truly and accurately set forth in the attached Report.

Further, Affiant sayeth naught.


DAVID M. YERKES

Sworn to and subscribed
before me this 9 day of February
2004


NOTARY PUBLIC

My commission expires:

PATRICIA H. WILLIAMS
NOTARY PUBLIC
MY COMMISSION EXPIRES AUG. 31, 2006

EXPERT REPORT OF PROFESSOR DAVID M. YERKES

1. Counsel for defendant World Wrestling Entertainment, Inc. has retained me, David M. Yerkes, as an expert on the English language and has asked me these questions:¹

- (I) What is the status and usage in the English language generally of the term LIVING LEGEND?
- (II) What is the status and usage of the term LIVING LEGEND in the fields of sports and entertainment?

Conclusion

2. From my 25 years' experience as a Professor of the English language at Columbia University, and from all my study and research in preparing this report, I conclude that:

→ LIVING LEGEND has long been a generic term meaning "a famous person who is still alive". LIVING LEGEND is ubiquitous, a cliché, and is especially common in the fields of sports and entertainment. Hundreds of different sports and entertainment figures are called a "living legend", including more than 120 different wrestlers.

Bases for conclusion

- (A) Many dictionaries give LIVING LEGEND its own separate entry as an established generic term meaning "a famous person who is still alive". Most of the examples of a "living legend" provided by the dictionaries are sports and entertainment figures. (See ¶¶ 3-5 below.)
- (B) The generic term LIVING LEGEND is so common that it appears regularly in dictionaries and lists of clichés or overused words. LIVING LEGEND is everywhere said to be overused, but especially when applied to sports and entertainment figures. (See ¶¶ 6-7.)
- (C) LIVING LEGEND meaning "a famous person who is still alive" has been in constant use for more than a century and a half, since at least 1846. Since at least the 1930s, LIVING LEGEND has been a cliché. (See ¶¶ 8-10.)
- (D) A recent Google search for LIVING LEGEND on the Internet had 135,000 hits. Hundreds of different sports and entertainment figures are called a "living legend", including more than 120 different wrestlers. (See ¶¶ 11-13.)

¹ A summary of my qualifications and the materials reviewed follows as an Appendix to this report.

- (E) Finally, an electronic search of the “US Newspapers and Wires” Nexis database made February 18, 2003 to cover the preceding twenty years found 11,562 different articles using the term LIVING LEGEND, with many of the articles using the term more than once. A large share of all these examples of a “living legend” are sports and entertainment figures, including many different wrestlers. (See ¶¶ 14–16.)

- (A) Many dictionaries give LIVING LEGEND its own separate entry as an established generic term meaning “a famous person who is still alive”. Most of the examples of a “living legend” provided by the dictionaries are sports and entertainment figures.

3. Dictionaries do not and cannot include every combination of words that is used to describe something. The number of such combinations in English is endless. Dictionaries include only combinations that are so widely used they have become generic terms — i.e., in linguistics, terms that indicate a genus or kind of thing. Generic terms are the name of the thing itself, and just the fact that LIVING LEGEND is an entry in a dictionary confirms that LIVING LEGEND is a generic term.

4. Many dictionaries give LIVING LEGEND its own separate entry, or subentry, as an established generic term meaning “a famous person who is still alive”, e.g.²

“**a living legend** person who has achieved great fame during his lifetime and is still alive.” (*Oxford Advanced Learner’s Dictionary of Current English*, fourth edition, copyright 1989)

“**legend** ... *Many of golf’s living legends were playing.*” (*Oxford Advanced Learner’s Dictionary of Current English*, sixth edition, copyright 2000)

“**a living legend** ... a person who has become famous while still alive: *Her 30-year study of chimpanzees made her a living legend.*” (*Oxford Idioms Dictionary*, copyright 2001)

“**living legend** ... a person who is very famous like a person in an old story that everyone knows, but who is still alive: *Bannister’s four-minute mile made him a living legend.*” (*Longman Dictionary of English Language and Culture*, copyright 1992)

² Photocopies from all these dictionaries are annexed as Attachment A.

“living legend someone who is famous for being extremely good at something: *one of the living legends of rhythm and blues*” (*Longman American Dictionary*, copyright 2000)

“living legend ... someone who is famous for being extremely good at something: *John Lee Hooker isn't just a great blues player – he's a living legend.*” (*Longman Dictionary of Contemporary English*, third edition, copyright 2001)

“living legend/legend in s[ome]b[ody]’s own lifetime (=someone who has become a legend while still alive) *Michael Jordan is a living legend of basketball.*” (*Longman Language Activator*, second edition, copyright 2002, page 414)

“living legend someone who is famous for being extremely good at something, and who still does that activity: *His music has made him a living legend.*” (*Longman Dictionary of Contemporary English*, new edition, copyright 2003)

“legend ... a living [legend] une légende de son vivant” (*Collins Robert Unabridged French-English English-French Dictionary*, fifth edition, copyright 1998)

“legend ... a living [legend] une légende vivante” (*Oxford-Hachette French Dictionary*, third edition, copyright 2001)

“legend ... a living [legend] une légende vivante” (*Collins Robert Unabridged French-English English-French Dictionary*, sixth edition, copyright 2002)

“living ... she was a [living] legend sie war schon zu Lebzeiten e[ine] Legende” (*Langenscheidt's Condensed Murat-Sanders German Dictionary*, copyright 1985)

“legend ... a living [legend] una leggenda vivente” (*DII Dizionario Inglese Italiano, Italiano Inglese*, copyright 2001)

“living ... a [living] legend, persona muy famosa en vida.” (*Langenscheidt's New College Spanish Dictionary*, copyright 1998)

“legend in one’s own lifetime/living legend. Both of these phrases are now clichés ... Tony Blackburn, a disc jockey, [wrote]: ... ‘They call me the Living Legend ...’ [.] Lytton Strachey in *Eminent Victorians* (1918) ... wrote of Florence Nightingale: ‘... Unrecognised, the living legend flitted for a moment before the common gaze.’” (*Bloomsbury Dictionary of Phrase & Allusion*, copyright 1991)

“legend in one’s own lifetime, a living legend, a. *Idioms > Clichés.* ...” (*Phrases*, copyright 1990)

“living legend ... Strachey described the great nurse [Florence Nightingale] as a *living legend*, the first recorded use of that cliché.” (*Facts On File Encyclopedia of Word and Phrase Origins*, revised edition, copyright 1997, pages 414 and 405)

5. Significantly, seven of the nine examples of a “living legend” provided by the above dictionaries are sports and entertainment figures: Roger Bannister, John Lee Hooker, Michael Jordan, Tony Blackburn, unnamed musicians, and unnamed golfers.

(B) The generic term **LIVING LEGEND** is so common that it appears regularly in dictionaries and lists of clichés or overused words. **LIVING LEGEND** is everywhere said to be overused, but especially when applied to sports and entertainment figures.

6. The generic term **LIVING LEGEND** is so common that it appears regularly in dictionaries and lists of clichés or overused words, e.g.:³

“[Clichés] are trite or hackneyed words or phrases used by writers over and over until they have lost whatever freshness they may once have had. ... one can underline the phrase ‘living legend’ and say, ‘That is a cliché.’” (*On Writing*, copyright 1970, page 148)

“Clichés are trite, overused expressions ... Watch out for ... *living legends* ...” (*CliffsQuickReview Writing: Grammar, Usage, and Style*, copyright 2001, page 120)

“**legend in one’s own lifetime/living legend.** ... Clichés by the 1920s/30s.” (*Cassell Dictionary of Clichés*, copyright 1996)

“A ‘living legend’ is a further form of the cliché.” (*Penguin Dictionary of Clichés*, copyright 2000, page 162)

“(a) **living legend** A suspect superlative ...” (*The Dimwit’s Dictionary: 5,000 Overused Words and Phrases*, copyright 2002)

“Living legend” (“The Cliché Cemetery”, copyright 2001, sumnet.summit.winston-salem.nc.us)

“living legend” (“Cliche and Word Journey: Cliche and Figure of Speech, The Main List”, www.angelfire.com)

“Florence Nightingale once was described as a ‘living legend in her own lifetime’ – a sentence with the unenviable record of including two clichés in half a dozen words (‘living legend’ and ‘legend in her own lifetime’) ...” (“The A-Z of Plain Text: Clichés”, copyright 2002, www.plain-text.co)

³ Photocopies and printouts are annexed as Attachment B.

7. LIVING LEGEND is everywhere said to be overused, but especially when applied to sports and entertainment figures, e.g.:⁴

"The term living legend is tossed around like a frisbee these days ..." ("Lord Carrett: Rockabilly", www.lordoflaughs.com)

"The overused phrase 'Living Legend,' can be legitimately bestowed on precious few mortals; one of them is Mikhail Baryshnikov." ("Barry's Dance Review", copyright 1996, www.dance90210.com)

"The term 'living legend' gets tossed around too loosely, but John Lee Hooker is the real thing." ("Metro", April 17-23, 1997, www.metroactive.com)

"The term 'Living Legend' has been devalued through overuse, but there is no one who deserves the title more than Rufus Thomas." ("Memphis Flyer", December 25, 1997, www.memphisflyer.com)

"The term 'living legend' is often bestowed, yet rarely deserved." ("List of great New Speculative Fiction books for sale", copyright 1998, www.orb-store.com)

"So many people throw the term 'living legend' around that it has become virtually meaningless ... especially in the field of music." ("New Haven Advocate", copyright 1998, old.newhavenadvocate.com)

"Shawn was by then the personification of that overused term living legend." ("Dance Magazine", June 1998, www.findarticles.com)

"If the term 'living legend' weren't a stock cliché used by every celebrity ass-kisser around ..." ("OffBeat", copyright 1999, www.offbeat.com)

"Thompson – at age 50 – is arguably one of a handful of artists who justly deserves the grossly overused moniker 'living legend.'" ("Arts & Entertainment", October 6, 1999, www.mountainx.com)

"'Living Legend' is an overworked cliché in the music business ..." ("Eric Taylor at the Real Music Club", November 4, 1999, www.mysongwriters.com)

"... John Mayall has earned the much overused accolade 'living legend.'" ("Honolulu Star-Bulletin", January 11, 2001, starbulletin.com)

"In these days when hyperbole is common, the term 'living legend' is sometimes used rather loosely." ("ChessCafe.com", September 24, 2001, C/Cafe/Reviews/books.htm)

⁴ Printouts are annexed as Attachment C.

"We're all in agreement that The O'Jays are living legends. We also agree that the term 'living legend' is often overused ..." ("The O'Jays", October 23, 2001, www.mcarecords.com)

"The phrase 'living legend' is frequently overused, but it could have been coined for Muhammad Ali." ("Preview Online", January-February 2002, www.preview-online.com)

"The accolades of 'living legend' and 'incomparable,' along with standing ovations, are much too overused in our much too hyped modern world." ("Jack Neal's Theatre Reviews", July 20, 2002, www.nevada-events.net)

"The Brubeck 8-0 was the final official concert of the Festival. The great living legend (sorry about the cliché) played a set of largely unreleased music ..." ("Jazz Notes", October 2002, www.jazzhouse.org)

"The phrase 'living legend' is over-used ..." ("The Mountain Photography of Brad Washburn", copyright 2003, climb.mountainzone.com)

"The term 'living legend' gets tossed around in the music business on a pretty indiscriminate basis ..." ("Albuquerque Journal", January 3, 2003, www.abqjournal.com)

"'Living legend' is among a sportswriter's most overused alliterative crutches ..." (Memphis Flyer Interactive", January 28, 2003, www.memphisflyer.com)

"If you think the term 'living legend' is either hack or cliché, then you haven't met Ken Kragen." ("The Business of Ventriloquism", April 17, 2003, www.ronnlucas.com)

"The term 'living legend' gets thrown about quite a bit these days ..." ("ABC Gold & Tweed Coasts", June 6, 2003, www.abc.net)

"... one of the few players, who really does live up to the, often overused, phrase 'living legend'." ("Trinity Mirror", June 20, 2003, icderry.icnetwork.co)

"... the term 'living legend' is overworked but [Cher] has had a top hit in each of the last five decades." ("Writers on the Loose", July 26, 2003, www.lonsberry.com)

"The term 'living legend' has become a cliché in the entertainment industry." ("Savannah Morning News", August 8, 2003, www.savannahnow.com)

"The phrase 'living legend' gets thrown around a lot in popular culture, but in regard to Robert Lockwood Jr. it couldn't be more fitting." ("Seattle Post-Intelligencer", November 14, 2003, seattlepi.nwsourc.com)

"I was expecting to be over-whelmed by nostalgia - gagging on the urge to spew trite prose - valiantly chocking back familiar reviewer phrases like 'a living legend' ..."
("North Shore News", November 21, 2003, www.nsnews.com)

"The phrase 'living legend' is thrown around too much these days, but if it refers to Carroll Shelby, it fits. ... winner of Le Mans as a driver ... Carroll casts an immense shadow over the motor racing world of the last four decades." ("The Official Carroll Shelby Website", December 8, 2003, www.carrollshelby.com)

"The term 'living legend' may be overused to the point of cliché, but in the case of David Allan Coe, it fits like a glove." ("Artist Direct", December 25, 2003, www.artistdirect.com)

- (C) **LIVING LEGEND** meaning "a famous person who is still alive" has been in constant use for more than a century and a half, since at least 1846. Since at least the 1930s, **LIVING LEGEND** has been a cliché.

8. An 1846 book review in *Graham's American Monthly Magazine of Literature, Art, and Fashion* quotes the book being reviewed as saying that before her death Joan of Arc was already a "living legend". The heading of an article from a 1900 issue of *Frank Leslie's Popular Monthly* about Paul Kruger, president of the South African Republic, calls Kruger "A LIVING LEGEND". From the *New York Times* come, for instance, a 1935 article calling Lawrence of Arabia a "living legend", a 1936 article calling the writer G.K. Chesterton a "living legend", a 1937 article calling Lindbergh a "living legend", a 1938 article calling the producer Daniel Frohman a "living legend", a 1947 article calling small-bore gun-barrel maker Harry Pope a "living legend", and a 1952 article calling Carl Hubbell a "living legend". Hugh Hefner calls himself a "living legend" in a 1962 *Wall Street Journal* article, and from the *New York Times* again come a 1966 article calling Ben Hogan "the living legend from Texas", a 1969 article calling "Original Met" Rod Kanehl a "living legend", a 1974 article calling Joan Joyce "the Babe Ruth of women's softball" and a "living legend", a 1980 article calling Steve Balboni a "living legend", a 1990 article in which United States

District Court judge S. Arthur Spiegel calls Pete Rose a “living legend”,⁵ and a 2000 article calling both Byron Nelson and Sam Snead a “living legend”.⁶

9. Note that the *Cassell Dictionary of Clichés* says that LIVING LEGEND meaning “a famous person who is still alive” was already a cliché by the 1920s and 1930s, and that by 1970 the book *On Writing* can say that LIVING LEGEND has “lost whatever freshness [it] may once have had” (see ¶ 6 above).

10. From the beginning then, LIVING LEGEND has been a term whose meaning is the same as the sum of its parts: in the term LIVING LEGEND, LIVING continues to have its ordinary meaning of “alive” and LEGEND continues to have its ordinary meaning of a “famous person”. Hence LIVING LEGEND is the name of the thing itself, saying exactly what it is: a famous person who is still alive.

(D) A recent Google search for LIVING LEGEND on the Internet had 135,000 hits. Hundreds of different sports and entertainment figures are called a “living legend”, including more than 120 different wrestlers.

11. A Google search of the Internet made December 8, 2003 for “living legend” had 135,000 hits. Hundreds of different sports and entertainment figures are called a “living legend”, including more than 120 different wrestlers.⁷

12. Among the sports and entertainment figures called a “living legend” are:

- singers and musicians Chet Atkins, Harry Belafonte, Tony Bennett, Chuck Berry, Pat Boone, David Bowie, James Brown, Ruth Brown, Dave Brubeck, Glen Campbell, Josep Carreras, Benny Carter, Johnny Cash, Tracy Chapman, Ray Charles, Cher, Eric Clapton, Petula Clark, Judi Collins, Perry Como, Sam Cooke, Vic Damone, Neil

⁵ Judge Spiegel’s use of LIVING LEGEND has been reprinted in the *Oxford Dictionary of American Legal Quotations*: “Foremost, we must recognize that there are two people here: Pete Rose, the living legend, the all-time hit leader, and the idol of millions; and Pete Rose, the individual who appears today convicted of two counts of cheating on his taxes” (page 386; photocopies are at the end of Attachment D).

⁶ Printouts from microfilms of all these magazines and newspapers are annexed as Attachment D.

⁷ Printouts from the search results are all annexed as Attachment E.

Diamond, Bo Diddley, Dion, Willie Dixon, Bob Dylan, Duane Eddy, Mark Farner, Aretha Franklin, Marvin Gaye, Jerry Goldsmith, Al Green, Buddy Guy, Merle Haggard, Bill Haley, Emmylou Harris, Mickey Hart, Edwin Hawkins, Isaac Hayes, Jimi Hendrix, Buddy Holly, John Lee Hooker, Lena Horne, Glenn Hughes, Mahalia Jackson, Michael Jackson, Etta James, Billy Joel, Elton John, Quincy Jones, B.B. King, Brenda Lee, Jerry Lee Lewis, Yo Yo Ma, Madonna, Bob Marley, Curtis Mayfield, Paul McCartney, Joni Mitchell, Scotty Moore, Van Morrison, Willie Nelson, Roy Orbison, Johnny Otis, Earl Palmer, Dolly Parton, Luciano Pavarotti, Carl Perkins, Itzhak Perlman, Wilson Pickett, Gene Pitney, Elvis Presley, Andre Previn, Leontyne Price, Lloyd Price, Tito Puente, Bonnie Raitt, Otis Redding, Smokey Robinson, Arturo Sandoval, Santana, Dianne Schurr, Pete Seeger, Del Shannon, Artie Shaw, Bobby Short, Shel Silverstein, Paul Simon, Dusty Springfield, Bruce Springsteen, Ralph Stanley, Isaac Stern, Rod Stewart, George Strait, Barbra Streisand, James Taylor, Allen Toussaint, Ernest Tubbs, Tina Turner, Van Cliburn, Stevie Ray Vaughan, Richie Valens, Gene Vincent, Rufus Wainwright, Dinah Washington, Muddy Waters, Claude Williams, Hank Williams, Stevie Wonder, Neil Young, Frank Zappa, etc.;

- actors and actresses June Allyson, Julie Andrews, James Arness, Richard Attenborough, Lauren Bacall, Carroll Baker, Anne Bancroft, Brigitte Bardot, Gene Barry, John Drew Barrymore, Richard Benjamin, Big Bird, Claire Bloom, Ernest Borgnine, Marlin Brando, Carol Bruce, Michael Caine, Kitty Carlisle, Leslie Caron, Carol Channing, Cyd Charisse, Joan Collins, Sean Connery, Tim Conway, Jackie Cooper, Tony Curtis, Ossie Davis, Doris Day, Ruby Dee, Gloria DeHaven, Olivia de Havilland, Robert De Niro, Angie Dickinson, Kirk Douglas, Clint Eastwood, Nanette Fabray, Peter Falk, Albert Finney, Joan Fontaine, Glenn Ford, John Forsythe, Zsa Zsa Gabor, James Garner, Mitzi Gaynor, Farley Granger, Gene Hackman, Barbara Hale, Julie Harris, Charlton Heston, Dwayne Hickman, Dennis Hopper, Tab Hunter, Betty Hutton, Van Johnson, James Earl Jones, Deborah Kerr, Jack Klugman, Martin Landau, Frances Langford, Angela Lansbury, Janet Leigh, June Lockhart, Gina Lollobrigida, Sophia Loren, Shirley MacLaine, Karl Malden, Patrick McGeehan, Jayne Meadows, Vera Miles, Roger Moore, Rita Moreno, Patricia Neal, Paul Newman, Julie Newmar, Jack Nicholson, Kim Novak, Hugh O'Brian, Maureen O'Hara, Peter O'Toole, Al Pacino, Jack Palance, Betsy Palmer, Suzanne Pleshette, Sidney Poitier, Tom Poston, Tony Randall, Ronald Reagan, Robert Redford, Vanessa Redgrave, Debbie Reynolds, Cliff Robertson, Dale Robertson, Fred Rogers, Mickey Rooney, Jane Russell, Eva Marie Saint, Paul Scofield, Omar Sharif, Maggie Smith, Robert Stack, Jean Stapleton, Maureen Stapleton, Gale Storm, Meryl Streep, Elizabeth Taylor, Rod Taylor, Shirley Temple, Rip Torn, Less Tremayne, Peter Ustinov, Robert Vaughn, Gwen Verdon, Robert Wagner, Eli Wallach, Adam West, Billie Whitelaw, James Whitmore, Richard Widmark, Esther Williams, Shelley Winters, Norman Wisdom, Robert Wise, Joanne Woodward, Fay Wray, Jane Wyatt, Efrem Zimbalist, Jr., etc.;
- comedians Steve Allen, Woody Allen, Joey Bishop, Carol Burnett, Red Buttons, John Byner, Charlie Callas, Dick Capri, Art Carney, Jack Carter, John Cleese, Irwin

Corey, Bill Cosby, Bill Dana, Dom Deluise, Phyllis Diller, Shecky Greene, Bob Hope, Emmett Kelly, Alan King, Mal Z. Lawrence, Jerry Lewis, Steve Martin, Mary Tyler Moore, Harry Morgan, Eddie Murphy, Bob Newhart, Carl Reiner, Freddie Roman, Dick Van Dyke, Gene Wilder, etc.;

- porn stars Danni Ashe, Christy Canyon, Vanessa del Rio, Debi Diamond, Ashlyn Gere, Nina Hartley, John Holmes, Jenna Jameson, Ron Jeremy, Jill Kelly, Chasey Lain, Heather Lee, Ginger Lynn, Shanna McCullough, Tyffany Million, Peter North, Jeff Stryker, Cole Tucker, Ona Zee, etc.;
- baseball players Hank Aaron, Tommy Agee, Roberto Alomar, Jesse Barfield, Yogi Berra, Barry Bonds, Gary Carter, Orlando Cepeda, Roger Clemens, Lenny Dykstra, Rollie Fingers, Whitey Ford, Jim Fregosi, Ken Griffey Jr., Tony Gwynn, Rickey Henderson, Reggie Jackson, Ferguson Jenkins, Randy Johnson, Harmon Killebrew, Jerry Koosman, Don Larsen, Greg Maddux, Juan Marichal, Pedro Martinez, John Mayberry, Willie Mays, Tug McGraw, Mark McGwire, Denny McLain, Paul Molitor, Joe Morgan, Stan Musial, Tony Oliva, Tony Perez, Jimmy Piersall, Johnny Podres, Cal Ripkin Jr., Frank Robinson, Alex Rodriguez, Pete Rose, Tom Seaver, Ken Singleton, Ozzie Smith, Duke Snider, Willie Stargell, Rusty Staub, Dave Stieb, Darryl Strawberry, Marv Throneberry, Luis Tiant, Willie Upshaw, Mookie Wilson, Dave Winfield, etc.;
- basketball players Kareem Abdul-Jabbar, Larry Bird, Marcus Camby, Wilt Chamberlain, John Havlicek, Michael Jordan, Bob Lanier, Karl Malone, Reggie Miller, Shaquille O'Neal, Scottie Pippen, David Robinson, Bill Russell, John Stockton, Isiah Thomas, etc.;
- football players Terry Bradshaw, Jim Brown, Larry Csonka, Mike Ditka, Sam Etcheverry, Doug Flutie, Tony Gabriel, Frank Gifford, Franco Harris, Calvin Hill, Raghib Ismail, Jack Lambert, Dan Marino, Warren Moon, Earl Morrall, Walter Payton, Barry Sanders, Jan Stenerud, Jim Taylor, Joe Theismann, Johnny Unitas, Paul Warfield, etc.;
- hockey players Mike Bossy, Ray Bourque, Ken Dryden, Phil Esposito, Peter Forsberg, Ron Francis, Grant Fuhr, Wayne Gretzky, Dominik Hasek, Gordie Howe, Bobby Hull, Brett Hull, Guy Lafleur, Mario Lemieux, Frank Mahovlich, Mark Messier, Andy Moog, Bobby Orr, Gilbert Perreault, Patrick Roy, Brett Saberhagen, Joe Sakic, Steve Shutt, Steve Yzerman, etc.;
- golfers Tommy Aaron, Miller Barber, Gay Brewer, Billy Casper, Lee Elder, Al Geiberger, Gene Littler, Jack Nicklaus, Greg Norman, Arnold Palmer, Gary Player, Chi Chi Rodriguez, Lee Trevino, Kathy Whitworth, Tiger Woods, etc.;
- tennis players Andre Agassi, Bjorn Borg, Jimmie Connors, Margaret Court, Althea Gibson, Billie Jean King, Rod Laver, Chris Evert Lloyd, John McEnroe, Martina Navratilova, Yannick Noah, Pete Sampras, Monica Seles, etc.;

- boxers Muhammad Ali, Alexis Arguello, Rubin Carter, Julio Cesar Chavez, George Chuvalo, Roberto Duran, George Foreman, Joe Frazier, Emile Griffith, Larry Holmes, Evander Holyfield, Barnard Hopkins, Jake LaMotta, Lennox Lewis, Ray Mancini, Rocky Marciano, Aaron Pryor, James Toney, etc.;
- wrestlers Abdullah the Butcher, Afa the Wild Samoan, Willy Allen, Lioness Aska, Steve Austin, Mickey Benedict, Dick Beyer, Lewis Blain, Freddie Blassie, Jimmy Blast, Nick Bockwinkel, The Body, The Canuk, Kiev Capo, Carlos Colon, Jim Cornette, Danny Davis, Craig Downing, Dreadnaught, Bill Dundee, Ryan Eatmon, Robbie Ellis, Tony Eriole, Jackie Fargo, Ric Flair, Mr. Flawless, Mick Foley, Dory Funk Jr., Terry Funk, Joe Furror, Dan Gable, Bob Geigel, Genova the Great, Gobbledy Gooker, Bill Goldberg, Bret Hart, Owen Hart, Stu Hart, Hayabusa, Bobby Heenan, Mark Henry, El Hijo Del Santo, Danny Hodge, Hulk Hogan, Hollywood Husker, Antonio Inoki, Chris Jericho, Rocky Johnson, Leilani Kai, Kane, Aleksandr Karelin, Gene Kiniski, Ivan Koloff, Wladek Kowalski, Jerry Lawler, Trent LeBeaux, Gene LeBell, Tony Leone, Lowedown, Ken Lucas, Adrian Lynch, Magnum MT, Dean Malenko, Dutch Mantell, Devil Masami, Mil Mascaras, Vince McMahon, Shawn Michaels, Etsuko Mita, Fabulous Moolah, Ace Murdoch, Floyd Murdoch, Kendo Nagasaki, Old School Funk, Dallas Page, Adam Pearce, Roddy Piper, Pro Pain, Powerhouse Pruitt, Punisher, Harley Race, Jim Raschke, William Regal, Repo Man, Dusty Rhodes, Tommy Rich, The Road Warriors, Jake Roberts, Billy Robinson, The Rock, Chris Saint, Bruno Sammartino, David Sammartino, Cael Sanderson, Tito Santana, Shamon, Ken Shamrock, The Sheik, Kinji Shibuya, Mima Shimoda, Mr. Showtime, Sidian, Biff Slamkovitch, Al Snow, Jimmy Snuka, Ricky Steamboat, Ray Stevens, Takanohana, Lou Thesz, John Tolos, Trash, Triple H, The Undertaker, Johnny Valiant, Matt Van Dam, Nikolai Volkoff, Wakanohana, Maverick Wild, Mark Windham, Larry Winters, Mr. Wrestling 2, Mae Young, Larry Zbyszko, etc.

13. Clearly then, no one in any of these fields can claim to be the exclusive “living legend”.

- (E) Finally, an electronic search of the “US Newspapers and Wires” Nexis database made February 18, 2003 to cover the preceding twenty years found 11,562 different articles using the term LIVING LEGEND, with many of the articles using the term more than once. A large share of all these examples of a “living legend” are sports and entertainment figures, including many different wrestlers.

14. An electronic search of the “US Newspapers and Wires” Nexis database made February 18, 2003 to cover the preceding twenty years found 11,562 different articles using the term LIVING LEGEND, as follows:⁸

⁸ Printouts of all the citation lists are annexed as Attachment F. In the lists, each citation gives the article’s source and the immediate contexts of any uses of LIVING LEGEND.

February 18, 1983 – February 18, 1993:	1,930 articles
February 19, 1993 – February 18, 1994:	404 articles
February 22, 1994 – February 18, 1995:	626 articles
February 19, 1995 – February 18, 1996:	689 articles
February 19, 1996 – February 18, 1997:	799 articles
February 19, 1997 – February 18, 1998:	991 articles
February 19, 1998 – February 15, 1999:	1,018 articles
February 19, 1999 – February 18, 2000:	1,211 articles
February 19, 2000 – February 18, 2001:	1,181 articles
February 19, 2001 – February 18, 2002:	1,351 articles
February 19, 2002 – February 18, 2003:	1,362 articles
TOTAL:	11,562 articles

15. Many of the 11,562 articles use the term LIVING LEGEND more than once. The 1,362 articles from February 19, 2002 through February 18, 2003, for instance, actually have a total of more than 1,500 uses of LIVING LEGEND. In just the ten most recent of these articles, a soccer player and more than a dozen different musicians are all called a “living legend” (underlining added):⁹

“With Living Legends, whose strongest member, Murs, is spinning off solo gold.” (*Village Voice*, February 18, 2003)

“... Enzo Francescoli, who is also a former professional soccer player . . . and a living-legend of the game.” (*Business Wire*, February 17, 2003)

“As George R. White, author of ‘Bo Diddley: Living Legend’ wrote . . .” (*New York Times*, February 16, 2003)

“From living legends to up-and-comers . . . [t]he 2003 lineup includes Bonnaroo alums Ben Harper . . . Jack Johnson . . . Warren Haynes . . . Keller Williams, Robert Randolph . . . Bela Fleck . . . Making their first Bonnaroo appearances are, James Brown . . .” (*PR Newswire*, February 15, 2003)

“Ellis Marsalis Jr. was hailed as the JE Living Legend Award recipient . . .” (*Times-Picayune*, February 15, 2003)

“It wasn’t until 1963 that a Merle Haggard record got national airplay, and stardom soon followed. These days, he is recognized as a living legend in country music.” (*Daily Oklahoman*, February 14, 2003)

⁹ Full printouts of the quoted Nexis articles are annexed as Attachment G.

"People who have seen [Beres] Hammond perform speak of him with the hallowed awe accorded living legends." (*Miami Herald*, February 14, 2003)

"... after Valentine's Day? Living legends The O'Jays (no, they're not a Simpson fan club) take their Love Train to the James L. Knight Center for the aptly named Valentine's Lovefest." (*Miami Herald*, February 14, 2003)

16. Like Murs, Enzo Francescoli, Bo Diddley, and the others, many different wrestlers are also called a "living legend" in the Nexis articles. From just some of the more recent articles, here are fourteen different wrestlers all called a "living legend" (underlining added).¹⁰

"... Japanese living legend wrestler, Senator Kanji 'Antonio' Inoki." (*PR Newswire*, May 24, 1996)

"... Danny Hodge, a wrestler from the old days, the '50s and '60s, was being presented the ['Living Legend'] plaque" (*Arkansas Democrat-Gazette*, December 17, 1997)

"... Elowitch puts on his black tights and a snarl and becomes Robbie Ellis, a pro wrestling villain ... Elowitch is billed as 'The Living Legend,' a sneering, jeering bad guy ..." (*Boston Globe*, February 25, 1998)

"One of the last living legends of 'Wrestling at the Chase' is taking life easy ... Wrestling is still a part of Harley Race's life." (*St. Louis Post-Dispatch*, November 5, 1999)

"After being out of action for three months due to shoulder surgery, living legend Ric Flair will make his return to WCW television Monday night." (*New York Daily News*, September 9, 2000)

"Russian Aleksandr Karelin (282) is a living legend in Greco-Roman wrestling." (*Denver Rocky Mountain News*, September 10, 2000)

"... its central profiles of three WWF wrestlers are fascinating. There's Terry Funk, the middle-aged living legend who just can't give up the sport ..." (*Boston Herald*, September 17, 2000)

"During the match [Bruno] Sammartino suffered a broken neck. The injury further enhanced Hansen's image ... and he became known as the man who broke the neck of a living legend." (*Orlando Sentinel*, December 1, 2000)

¹⁰ Full printouts of these Nexis articles are annexed as Attachment H.

"[Mick] Foley (a No. 1 New York Times best-selling author and living legend of professional wrestling) is back ..." (*University Wire*, June 15, 2001)

"... Mr. Wrestling No. 2, one of the industry's living legends ..." (*Macon Telegraph*, July 12, 2001)

"Owings was asked how he would coach a wrestler to beat a living legend [Dan Gable or Cael Sanderson]." (*Des Moines Register*, March 17, 2002)

"... the wrestling world would never be the same ... After weeks of buildup, the two living legends, [Hulk] Hogan and The Rock, stared each other in the eyes ..." (*University Wire*, March 19, 2002)

APPENDIX

I, David M. Yerkes, am Professor of English at Columbia University and am the author of three books and more than fifty articles, published in eight countries, contributing to the study of the English language. I received a B.A. in English from Yale University in 1971, a B.A. in English from Oxford University in 1973 (Special Course in English Language), and an M.A. and a D.Phil. in English from Oxford in 1976. I taught at Oxford from 1973 to 1976 and have taught at Columbia since 1977, receiving tenure in 1982 and becoming a full professor in 1984. I was Director of Composition at Columbia for five years and have served as a consultant for many grammar books and dictionaries. A copy of my c.v. is annexed to this report as Attachment I.

I have been qualified as an expert on the English language by many state and federal courts, qualified by these courts to provide opinions about the status and usage of words and phrases in the English language. My expert report was adopted at length by the United States Court of Appeals in *Mead Data Central, Inc. v. Toyota Sales U.S.A., Inc.*, 875 F.2d 1026, 1027, 1029–1030 (2d Cir. 1989), and I contributed to the linguistic analysis that the Supreme Court accepted unanimously in *United States v. Sun-Diamond Growers of California*, 526

U.S. 398 (1999). During the past four years I have been deposed or have testified at trial as an expert witness on the English language in these cases:

SoftView v. Haworth (deposed in New York City, April 2000)

Donzi Marine v. R.J. Reynolds (deposed in New York City, June 2000)

AT&T v. CellularOne (deposed in Washington, D.C., August 2000)

Twin Laboratories v. Metabolife (deposed in New York City, October 2000)

Perkin-Elmer v. Amersham (deposed in Los Angeles, April 2001)

Learning Network v. Discovery (deposed in New York City, May 2001)

Komori Corporation v. Akiyama (testified in Washington, D.C., July 2001)

Smith & Nephew v. Applied Medical Resources (deposed in New York City, February 2002)

Malaco Leaf v. Promotion in Motion (deposed in New York City, June 2002)

Health Net, Inc. v. Provider HealthNet Services (deposed in Los Angeles, June 2003)

For my inquiry into the term LIVING LEGEND, I have reviewed both general and specialized dictionaries (see ¶¶ 4, 6, and 8 above in this report), Internet searches (see ¶¶ 6–7 and 11); and electronic databases of magazines, newspapers, and newswires (see ¶¶ 8 and 14–16). I am being paid at the rate of \$250/hour for research or drafting and \$350/hour for deposition or trial, and have no financial interest whatsoever in the outcome of this case.

Signed,


David M. Yerkes

January 8, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LARRY WHISTLER)	
a/k/a LARRY ZBYSZKO)	
a/k/a/ THE LIVING LEGEND,)	
an individual)	
)	
Plaintiff,)	Civil Action No.: 1 02- CV-1008-CC
)	
vs.)	
)	
WORLD WRESTLING)	
ENTERTAINMENT, INC., a Delaware)	
corporation,)	
)	
Defendant.)	

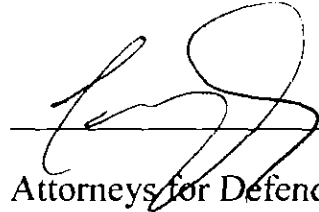
CERTIFICATE OF SERVICE

I hereby certify that I have served on opposing counsel in the above-referenced matter with the foregoing **NOTICE OF FILING OF ORIGINAL AFFIDAVIT**, via U.S. first-class mail, as follows:

Joel D. Myers, Esq.
Myers & Kaplan Intellectual Property Law, LLC
1899 Powers Ferry Road, Suite 310
Atlanta, Georgia 30339

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, positioned above a horizontal line.

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